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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

METALMARK NORTHWEST, LLC, an )  
Oregon limited liability company and )  
VALLEY BRONZE OF OREGON, INC., )

Plaintiffs, )

vs. )

LAURA JANELLE STEWART, )  
CHRISTOPHER W. STEWART, F. )  
LEITH BOGGESS, HIGHLAND )  
ORNAMENTAL IRON WORKS, INC., a )  
Virginia Corporation, MILESTONE )  
TARANT, LLC, a District of Columbia )  
Limited Liability Company, RICHARD T. )  
ROSS, SUPERIOR IRON WORKS, INC., )  
a Virginia Corporation, STEWART )  
SPRINGS, LTD., )

Defendants. )

Case No. 04-682-KI (Lead Case)

*CONSOLIDATED CASE: Cv 05-1920-KI*

OPINION AND ORDER

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KING, Judge:

Before the court is plaintiffs' Bill of Costs <sup>(#314)</sup>~~(#246)~~, as well as defendants' objections.

**LEGAL STANDARDS**

Fed. R. Civ. P. 54(d)(1) provides, in part: "Except when express provision therefor is made either in a statute of the United States or in these rules, costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs . . . ." This rule is not read "as giving district judges unrestrained discretion to tax costs to reimburse a winning litigant for every expense he has seen fit to incur in the conduct of his case." Farmer v. Arabian Am. Oil Co., 379 U.S. 227, 235 (1964). Expenses which may be taxed as costs against a losing party are enumerated in 28 U.S.C. § 1920:

A judge or clerk of any court of the United States may tax as costs the following:

- (1) Fees of the clerk and marshal;
- (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

However, the discretion to grant costs does not include the authority to tax costs beyond those authorized by statute or contract. Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437, 445 (1987). Thus, the discretion granted under Rule 54(d) allows a court to decline to tax costs, but does not authorize a court to award excess costs in the absence of a “specific congressional command.” Id. at 442.

### **DISCUSSION**

I deny defendants’ objection based on overcompensation of costs in the arbitration proceeding. While it does appear that costs not sought by plaintiffs were awarded by the arbitrator, the issue should have been raised with the arbitrator or, alternatively, with me during the briefing on whether to confirm the arbitration award.

I decline to award costs that were awarded in the arbitration proceedings, regardless of whether the material, such as deposition copies, were also used in this court. The parties are

asked to confer to determine if they can agree on the amounts to be deducted, which are proposed by defendants on page five of their objections.

I decline to award the cost of any hearing or trial transcripts. I do not find that they were reasonably necessary for use in the case.

I decline to award the service fees of \$310.00 for service on Manhattan Construction and Superior Iron Works. The service occurred in 2004 as part of the arbitration proceeding.

I award in full the fees of the clerk, \$150.00; the remaining \$305.00 in service fees for F. Boggess, C. Stewart, L. Stewart, and S. Corey; and the prevailing party fee of \$20.00.

### CONCLUSION

Plaintiffs' Bill of Costs (~~#246~~ <sup>(#314)</sup>) is granted with costs awarded in a reduced amount, as explained above. The parties are asked to confer on the amount to be awarded in compliance with this ruling. By September 29, 2006, they should either submit a stipulation on the amount or short statements of the disputes and their respective positions.

IT IS SO ORDERED.

Dated this 5<sup>TH</sup> day of September, 2006.

  
Garr M. King  
United States District Judge